A.F.R.

12.1.2006

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

SINGLE BENCH: HON'BLE SHRI S.R. NAYAK, CJ.

WRIT PETITION NO. 262 OF 2005

PETITIONER — Municipal Corporation, Bilaspur through the Commissioner, Municipal Corporation, Bilaspur, Dist. Bilaspur (Chhattisgarh)

Vs.

RESPONDENTS

1. Mohammed Farookh, S/o Noor Mohammed, aged about 26 years, Ex-Clerk, Municipal Corporation, Bilaspur & Resident of Kasim Para, Torwa Naka Near Kendriya Vidyalaya Bilaspur (Chhattisgarh)
2. Presiding Officer, Labour Court Bilaspur, District Bilaspur (Chhattisgarh)

Present: Mrs. Hamida Siddique, learned counsel for the petitioner.

Mr. Vinod Deshmukh, learned counsel for respondent No.1..

ORAL ORDER

(Passed on 12th January, 2006)

Municipal Corporation Bilaspur was the employer of first respondent. The first respondent was removed from service w.e.f. 10/01/2000 on the ground that there was no need for his services. Being aggrieved by the above action of the petitioner – Municipal Corporation, the first respondent initiated conciliation proceedings ultimately resulting in the failure report. In the circumstance, the State Government referred the dispute to the Labour Court, Bilaspur for adjudication.

(2) The Labour Court Bilaspur having conducted the enquiry and recording a finding that the removal of the first respondent from service tentamounted to retrenchment and the action of the petitioner – Municipal Corporation was in utter violation of mandatory provisions of Section 25-G of the Industrial Disputes Act, 1947 (for short "the Act") answered the reference in favour of the first respondent and directed reinstatement of the first respondent into service with continuity of services and full back wages, by its award dated 16/11/2004. Hence, this writ petition by the aggrieved Municipal Corporation of Bilaspur.

(3) Heard learned counsel for the parties and perused the impugned award and other material papers appended to the writ petition. The finding of the Labour Court that the first respondent was removed from service in violation of the mandatory provisions of Section 25-G was not assailed with any seriousness. As a matter of fact, as pointed out by the Labour Court, before removing the first respondent from service the petitioner did not adhere to / comply with the mandatory provisions of Section 25-G of the Act. Realizing this position, Smt. Hamida Siddiqui learned counsel for the petitioner – Municipal Corporation would contend that the Labour Court ought not to have awarded full back wages to the first respondent. It needs to be noticed that generally speaking full back wages should follow the reinstatement of a workman into service unless it is shown satisfactorily that between the removal and reinstatement, the workman concerned was gainfully employed elsewhere. This is neither the plea of the petitioner nor any proof was laid before the Labour Court to support such plea. In the circumstance, I cannot take

any exception to the award of the Labour Court granting full back-wages to the respondent workman, particularly, when no blame could be attributed to the first respondent workman. There is no merit in this writ petition and it is accordingly dismissed, however, with no order as to costs.

Sd/-
Chief Justice

Brajesh